



**TOWN OF WESTFORD  
PLANNING DEPARTMENT**

TOWN HALL  
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**Planning Board Meeting Minutes**

**April 14, 2015**

**Approved July 20, 2015**

**Place:** Blanchard School Auditorium, 14 West Street, Westford, MA

**Present:** Michael Green, Dennis Galvin, Kate Hollister, Matthew Lewin, Darrin Wizst

**Staff Present:** Chris Kluchman, AICP; Jeff Morrisette, Town Planner; Jonathan Silverstein, Town Counsel

Green opened the meeting and announced the Board would be entering executive session.

*Motion made by Galvin to enter executive session to discuss strategy with respect to litigation, related to Newport Materials, LLC vs. Planning Board, as an open meeting may have a detrimental effect on the bargaining or litigation position of the Town, and to invite staff and Town Counsel. Motion seconded by Lewin. The motion passed by a 5-0-0 roll call vote.*

Green reopened the public session.

**Open Forum:** 7:48 p.m.

There were no discussion items for open forum.

**Public Hearing:**

**PB 1504 SPR/MCP/SP WRPOD/SP Under 9.3/SWM  
20 Commerce Way (Also Known as 540 Groton Road)  
Newport Materials LLC and 540 Groton Road LLC  
Continued from April 13, 2015**

7:49 p.m.

*Public hearing for a Site Plan Review (Section 9.4 of the Zoning Bylaw), a Special Permit for a Major Commercial Project (Table of Principal Use Regulations and Section 9.3.A), a Special Permit for storage of hazardous materials within the Water Resources Protection Overlay District, Section 8.1) a Special Permit (Section 9.3), and a Stormwater Management Permit (under Chapter 147 of the Town of Westford General Bylaws) in order to construct an asphalt manufacturing facility and associated materials stockpile yard with a 10,000 gallon tank for storage of #2 fuel oil. The applicant seeks the above permits and any other permit or relief as may be required under the Town of Westford Zoning Bylaw and as may be required by the Decision issued by Land Court 10 MISC 429867. The*

*Approved July 20, 2015*

*subject property is identified as Assessor's Map 048 Parcel 0011 Lot 0234 and is within the Industrial A Zoning District.*

Green stated this hearing was continued to give the Board the opportunity to review materials that were received the prior evening. He stated the Board will not be taking input from the applicant or the public. Questions may be directed from the Board to the applicant if clarification is needed.

Kluchman reviewed materials that were received since last night's hearing session: copy of a 2010 letter from School Superintendent Olsen, relative to air quality at the Miller School; letter from Attorney Tom Reilly; and several emails.

Galvin stated he reviewed the document submitted by Douglas Deschenes, attorney for the applicant. He stated there was a health assessment report and a memorandum from Woodward and Curran. The Woodward and Curran report indicates there was a concern that the risks that were evaluated did not include risks from the cumulative of the whole source, and they suggested this should be done. He asked the applicant to clarify this.

Deschenes stated the Woodward and Curran report addressed the totality of emissions, not only from the proposed facility, but also the quarry. He stated their perspective was they did a study on their proposed project and the existing activities of adjacent landowners and projects unrelated to them were not necessarily part of their emissions.

Lewin asked staff whether there are any materials from the prior application that talk about the potential impact of the asphalt plant on the property values of the surrounding properties. Kluchman stated in the beginning of this hearing process she prepared a variety of materials from 2009, but she does not recall that this information was available. Deschenes stated he believes there was some material presented with respect to the experience of home values adjacent to the Portsmouth facility.

Kluchman stated the Board has draft decisions before them. She recommended the Board considering adding to the MCP, the site plan, and Special Permit for WRPOD a section that would more specifically address the judge's decision to ensure the parameters under which the Board was working are very clear. She recommended the Board go through light manufacturing and the judge's parameters that he articulated. These were that the site plan include sound attenuation barrier, that the project has greater than five employees, that the applicant receive a variance to operate more than one principal use on the site (this is still underway with the Zoning Board of Appeals), and that the issue of the power source has been addressed.

Green asked what the Board's scope of review is, site plan related, regarding sound attenuation. Silverstein asked if Green's question is whether or not the Board can consider the potential implications of the proposed attenuation as possibly triggering a violation of the standard at the eastern property line because of reflection. Green stated yes. Silverstein stated this would not be outside the Board's permissible consideration. He stated the court did not address the question of what happens if the attenuation causes a new violation of the standard at another boundary.

Hollister asked about the status of a berm which was mentioned for the eastern side of the entry driveway. Kluchman stated some of the site plans do show a berm on the other side of the paved road, because the detailed site plan does not show that area, and it does not exist currently on the

site. Hollister also stated she had asked what would the sound level be at the western border if they just had baffling but did not have a wall, but she does not recall receiving this information.

Kluchman stated her recollection of the testimony from the sound expert was that the wall would cover approximately 20 dB, but they needed sound source attenuation in addition. Morrisette stated the sound expert suggested 20 dB was a likely attenuation factor from the wall, whereas the difference could be made up by the proposed source mitigation or other measures as determined with future sound studies.

Galvin stated the original rejection of this particular application was the result of site plan review, and a provision that requires the Board ensure that one of the first qualification is that the proposal is consistent with the zoning bylaws. In 2009 Board members came to the conclusion that because of the definition the project did not fit the bylaws and it was rejected. It has since come back before the Board with an extremely focused parameter, which is the judge held that the applicant did not qualify for light manufacturing, but suggested that if the sound attenuation could be accomplished then the project may be eligible for a site plan permit, along with other items. He stated he sees the Board having to decide whether or not the applicant has offered sufficient information and evidence to be able to convince the Board that they have been able to attenuate the sound issue, and thus qualify as light manufacturing.

Silverstein stated the Board has to address whether or not, as modified, the proposal would constitute light manufacturing, as the court has defined that term.

Galvin stated the applicant has demonstrated if they imposed a 35 foot x 1200 foot sound attenuation barrier, and the sound experts are in agreement, that they would have complied with that provision of the judge's decision. He stated if the Board were to grant a waiver for the sound attenuation it would be put in a position whereby they would contradict the Board's own original decision. He stated this is a qualification established by the judge to make them eligible for site plan, and the only one who could waive that would be the Zoning Board of Appeals.

Silverstein stated the Board cannot waive that as a component of the definition of light manufacturing. The applicant is seeking a variance from the Zoning Board of Appeals and if they get that variance that would allow them to proceed without the wall under use, but it would not allow them to proceed without the wall under the MCP unless the Planning Board grants a waiver. He stated the Board does not have to deal with the wall under site plan, but they do need to deal with it on MCP. If they grant a waiver under MCP it will be subject to them also getting a variance from the Zoning Board of Appeals.

Silverstein recommended that if the Board approves the site plan and the applicant gets a variance from the Zoning Board of Appeals the Board might want to note in the site plan approval that the Board is in agreement with them not building the wall if they are granted the variance. Green asked why the Board would not want to have further discussion of attenuation if the wall is removed. Silverstein stated the Board certainly could do that.

Galvin stated it is his recollection that the Zoning Board of Appeals approved a variance for the sound attenuation and asked about the status of that decision. Kluchman stated the Zoning Board of Appeals has decided to reopen their hearing. There are two variances, and one Special Permit, and all three have been reopened, so there are no decisions that have taken effect or have been filed.

Hollister stated the Board normally does not grant a waiver based upon the future decision of another Board. She asked if this is being allowed due to the time constraint the Board is under. Silverstein clarified they are discussing the Board approving a plan, and if they get relief from another Board they may or may not have to build a component of the plan. The Board would not be making their relief contingent on the applicant getting other relief.

In response to a question from the Board, Deschenes stated at one point there was a discussion of an 8 foot high wall, as opposed to a 35 foot wall. He stated the 8 foot wall would allow the applicant to meet the 70 dB limitation, but the higher wall would also meet the 10 dB from ambient requirement. He confirmed the wall length is 1200 feet.

Matt Waterman, of LandTech Consultants, indicated on the plan the location of the berm on the easterly side, between Modern Continental and the access to the asphalt facility.

Kluchman stated due to discussion at the last meeting she would recommend adding a condition that the Town of Chelmsford Fire Department be added to the training. She reviewed the Issues of Consideration. She stated the MCP is the most comprehensive conditions and Site Plan Review does not include any sound conditions. Decision was made to follow the conditions in the MCP document to better address Deschenes' comments on the conditions.

Kluchman reviewed the Conditions for Approval. She stated Site Plan Review (SPR) would not take effect until other permits have been obtained. Condition 1b references if there is an appeal of the Land Court decision the SPR decision would become null and void, and the SPR decision is null and void if there is any violation of any of the Conditions of Approval. She stated Deschenes has raised objection to this. Silverstein stated that Deschenes' objection is that as framed a potentially minor violation of a condition could result in the permit becoming null and void. He stated the Board could consider a process by which a violation would give rise to a revocation hearing as a middle ground. Silverstein stated there is no provision for revocation of a Special Permit in the law, so if there is no provision for revocation in the permit and there is a violation of a permit condition the town's only option is to go to court to try to enforce. Deschenes indicated developing a process would alleviate his concern.

Kluchman reviewed operating limitations. She noted the applicant has objected to the provision that there will not be operations from December 15 to March 15. She stated this was taken from the DEP permit, which applies to both facilities. Galvin stated he would include July and August, based on a representation by Mr. DeFelice that indicated during July and August they would not be operating. Kluchman stated it is her understanding July and August would be the prime operating months. Rick DeFelice, of Newport Materials, stated they will be operating during the months of July and August.

Discussion was held about the production of 1500 tons per day. Lewin stated that discussion indicated this was not an average but a cap. He stated Deschenes' objection implies it is not limited to 1500 tons a day. Silverstein stated repeatedly during the trial, under oath, the applicant and its witnesses testified that there would be "maximum tonnage per day that was stipulated of 1500 tons." He stated in the proposed condition staff actually provided a condition that was more flexible, averaging 1500 tons per day. He stated there was a lot of concern from the audience that the average would be difficult to track and depending upon the inputs it would be difficult to keep track

of an average, and he raised the fact that the stipulation by the applicant was 1500 tons maximum. He stated it is up to the Board to decide whether or not that is a condition it wants to impose, consistent with the stipulation during trial, or if it wants to be more lenient, or if wants to avoid that issue altogether.

DeFelice stated the DEP permit allows for 300,000 tons a year, for approximately 225 production days a year, which averages 1500 tons. The thought process is that the site would be controlled by the 250 vehicle trips, irrespective of whether it were asphalt or crushed materials per day coming in. The ability to produce 1500 ton on average is available for 200 days. He stated given weather and scheduling conditions it makes it a difficult thing to do so 1500 would be an average. Green asked about the discrepancy in court testimony and testimony during this hearing process. DeFelice stated he has always determined an average of 1500 tons a day and he is not sure where that was construed as a maximum.

Kluchman asked why there was an objection to the language used. Deschenes stated because the language appears to limit them to no more than 1500 tons per day. Kluchman stated the convention she used for these conditions was from the applicant's traffic consultant, who used the same term to calculate the 250 trips per day. Silverstein stated there was a lot of discussion during trial and the litigation about what the DEP permit would and would not permit. He stated under the DEP permit if you are at 60,000 tons per month you are operating for five months. He indicated that DeFelice filed a number of affidavits saying he would never do that because he would be out of business in five months and he would never operate at maximum capacity. He stated the reason the Board may want to have a maximum production would be the difficulty keeping track of the 250 truck trip per day cap. This would be an additional measure to help ensure there are no peaks of traffic flow or impacts to the neighbors beyond what was anticipated.

Hollister stated if there was an average of 1500 tons per day, because there is no Sunday operation, that would be only 26 days a month they can operate, which would limit the to 39,000 tons per month, which is considerably less than the DEP permit of 60,000 tons per month. Silverstein stated it would still get them to 300,000 tons in a year. Hollister stated in keeping with the Master Plan in trying to encourage economic development she feels that is an undue burden on the applicant.

Green referenced the Land Court decision which indicated the maximum output of the project will be 1500 tons of asphalt per diem, which would be delivered in 24 ton capacity vehicles operating at 100% capacity. The plaintiff stated willingness to stipulate that the project will not be permitted to generate more than 250 trips daily. He asked where is the confusion. Deschenes expressed concern with language stating average monthly production. Kluchman stated they could say average daily production, or maximum daily production. She asked the Board what language they would like included. Green stated he would like to adhere to the court order.

Lewin asked if the Site Plan Review only includes the asphalt facility, not the material handling operation. Silverstein stated the position previously articulated by Mr. Deschenes during the self-storage facility application was once you trigger an MCP anything triggers further MCP review. Kluchman stated part of the Site Plan is the empty office building that is currently on the site, as the employees of the facility will be using that building daily and if there are any further uses of that building it requires a change to the Site Plan Review.

Traffic and transportation conditions were reviewed. Kluchman stated that Mr. Galvin has suggested a limit of 244 trucks per day based on traffic per day for the asphalt plant and 150 trucks per day allocated to the materials processing facility. She stated bundling the trips will make monitoring and enforcement easier. Galvin stated after studying the applicant's traffic study and listening to testimony during the public hearing he has determined that the applicant's total average daily operation in the traffic report is 224 vehicle trips per day. He stated allowing them 20 additional vehicle trips per day to account for special circumstances is reasonable, however, he does not agree with allowing them 250 vehicle trips per day. Hollister stated 250 is only three additional trucks. Green stated the court decision and discussion has centered around 250 trucks.

Silverstein stated the court made it very clear that it was not intending to limit the Board's discretion in the Special Permit context and recognized the Special Permit was not before the court. He stated the Board can set any number. Hollister stated she supports 250. Silverstein stated the objection of the applicant is the site wide limit of 450 trucks, rather than the 250 asphalt plan specific number. He stated the question is does a site-wide cap seem reasonable to the Board and is the 250 something the Board feels confident it can monitor. Galvin stated the Board did not include the entire site in its analysis and does not feel comfortable with the site wide limitation.

*Motion made by Galvin that the Board impose a daily limitation for vehicle trips on the Newport Materials asphalt facility of 244 trips per day. The motion failed for lack of a second.*

Wizst stated that the Site Plan Review only includes the asphalt facility so the Board should only consider the 250 truck trips for this purpose. He asked about discussion that there were no easements for the emergency access road. Kluchman confirmed that there are no easements on record.

Discussion was held on monitoring. Galvin suggested the video monitoring provide six months of recording. Lewin stated he would like to increase that to two years. Green asked who would have access to review the video. Kluchman stated under the proposed condition the Chief of Police and Building Commissioner could review the video. Silverstein stated if there were a violation it would be reasonable for a public official to obtain a copy of the video, at which time it would become a public record. Otherwise, the videos would not be public record. Morrisette recommended that the condition state the applicant has to submit a video monitoring plan, at which time the details could be fleshed out.

*A brief break was taken.*

Environmental protection issues were discussed. Kluchman stated the applicant has objected to posting a bond or financial security. Galvin stated this is a large project and poses an environmental risk for which the town should be protected with a reasonable bond. Silverstein stated the Board has the right to impose reasonable conditions and he is unaware of any case law specifically addressing this type of condition. He stated having a limit, or perhaps an insurance policy with the town as an additional insured in the event the applicant was not available to do the cleanup, would be reasonable. Deschenes stated requiring a bond for this project is unprecedented. He stated there have been other large projects in this town that pose a fire risk but were not required to provide bond. He stated they would be willing to name the town as an additional insured on their insurance policy.

Discussion was held regarding the Ecosorb for odor absorption. Silverstein stated the applicant indicated that there would be no odors off site so the Board could condition this. Hollister expressed concern with requiring review by the Board of Health. Green stated it would be reasonable for the Board of Health to have review authority for the material used. Kluchman recommended using language stating the applicant should submit material data safety sheets to the Board of Health. Deschenes stated they object to language indicating there will be no odor from their site, as the Ecosorb absorbs odor but does not completely eliminate odor. Kluchman recommended clarifying the language to read elimination of odor beyond the property line, or offsite.

Fire and life safety and storm water management conditions were reviewed. Hollister referenced the DEP condition that all roads on the site be paved. Kluchman confirmed this is a DEP condition, though the plan does not show this, and it will become a town condition. Hollister recommended a condition that if performance standards decrease on Route 40 a traffic light may have to be installed at the entrance driveway to this site.

The Board returned to discussion of the amount of bituminous asphalt production allowed. Kluchman stated the proposed condition reads average monthly production of 1500 tons of product per day. Deschenes stated they were in agreement with an average of 1500 tons per day. Silverstein clarified that the applicant would not be able to average over the course of a year so that if they had slow periods in March they would not be able to make it all up in July.

*Motion made by Hollister to accept the language in item C as written. Motion seconded by Wizst. The motion passed by a 3-2-0 vote.*

The Board completed review of the Site Plan Review and continued review of the Major Commercial Project. Kluchman stated the applicant opposes the condition that sound analysis be resubmitted to include the rock crusher and to provide funding for a peer reviewer to examine the analysis. Deschenes questioned the intention of this condition. He stated if the rock crusher is included in the ambient it would probably reduce the sound level and eliminate the need for attenuation. Lewin asked what the Board would gain by this condition. Kluchman stated throughout the hearing the Board expressed interest in the sound effect of the rock crushers and this indicates that the Board has further concerns that may need to be acted on.

Green stated throughout the hearings they have discussed that the MCP permit applies to the entire site. He asked if they have evidence and data to show that performance standards are met on the entirety of the site, and are there conditions that would address that concern. Hollister recommended changing language in Section E to include the site in totality.

Silverstein stated this section is in response to testimony that the Board has had from actual neighbors that this is going to have an impact on them, notwithstanding the modeling that is being done on a theoretical level, and that this would be looking at actual impacts and whether additional mitigation may be needed. Deschenes stated they have no problem conducting the tests defined for residential receptors. He stated if they do that and meet the standards it seems excessive to do it every year. If the Board is concerned with the machinery getting noisier as it ages he suggested doing this every third or fifth year. The Board agreed the testing be conducted in the first year of operation and every three years after that.

Deschenes stated they have no concerns with the 250 vehicle trips they committed to with respect to the asphalt plant. The 150 trips with respect to ABC Processing is a limitation set by the Zoning Board of Appeals. He stated they have multiple uses on the site and to limit them to 50 additional trips for those uses which currently have no limitation undermines the use of the property completely. He stated there was a determination by the traffic consultant that there is a certain level of existing vehicle traffic on the site and the analysis was would the additional 250 trucks cause problems.

Silverstein stated that at trial the applicant's traffic expert testified that all of the traffic existing and proposed from the asphalt plant put together would not exceed 250 trips, so that would suggest that they were evaluating the existing traffic to be substantially less than 250 before considering the asphalt plant. This is proposing nearly double that as a site wide cap, so he does not feel it can reasonably be argued to be in excess of what's taking place there now, plus what is being proposed with the additional 250 trips.

Galvin stated the 250 asphalt vehicles will be going through Commerce Way, which is how they will be monitored. He stated there are several access points at this location and he is concerned about how this will be monitored. He stated if they do not do this properly they will miss the ingress and egress to the asphalt plant. If there is an issue about total trips and this site adding a large number of vehicle trips then the remedy at this point in time is to deny one of these permits and then move forward. He stated they cannot monitor these trips if they do not have information on it. He has no information on ABC processing or on the other trips on the site, so it would be difficult to determine a number to impose.

Lewin asked could the Board come up with something that matches the no build traffic. Silverstein stated the Board has to put a number on it or it is not really enforceable. Kluchman stated the applicant did a traffic study this winter and they do have volume data from the Newport Materials driveway and it looks like a total of 21 peak hour trips. Deschenes stated he believes the traffic study indicated the existing morning peak traffic was 61 and the evening was in the 20's. Kluchman suggested the conditions will be refined and they can include the number from the traffic study as the limit. They will look at the existing counts from the driveway and use a cumulation of the existing counts as the maximum. Deschenes was in agreement with this method.

Discussion was held on rescinding the subdivision. Morrisette stated he is not sure this is worthwhile pursuing right now because if the Board were to enact a subdivision that would be essentially needing modification of the MCP and would come right back to the Board for modification. Green stated the Board is dealing with a single site, which is a focus of the MCP. Any further subdivision of the property would require the applicant to come back before the Board. Silverstein noted that Deschenes was nodding in agreement relative to this discussion. Deschenes stated they are opposed to a rescission of the subdivision and agree that if they were to implement the subdivision and change all these things around they would have to come back for modification of these permits.

*Motion made by Galvin to close the public hearing. Motion seconded by Hollister.*

After the motion and second, Lewin raised concern with not having any reliable information on what the impact this project would have on the property values surrounding it. He stated the judge in his decision said the baseline industrial area is the ideal locus. He stated this would make sense,



however, he needs to have an idea of how he can make an informed decision when he does not have the facts. He asked how the Board can close the public hearing when he cannot make a decision.

Green stated conditions can be imposed. Lewin stated the Board has had testimony on traffic, noise, particulate matter, but nothing to do with impact on property values. He stated without that information he cannot as a member of the Board vote to approve or deny this project. He stated he needs reliable information about the impact of the asphalt plant.

Galvin stated there is a bylaw that requires special permit criteria and establishes that there has to be characteristics of the site, characteristics of the proposal in relation to site, and one of the things talked about in neighborhood character is potential fiscal impacts and impact on town services. He stated it is up to the applicant to address that, if the applicant failed to address that in their application that is something a Board member can consider, it is something they failed to prove. Galvin stated over the course of the past five weeks they have had several individuals come forward who understand the value of their own property, to explain to the Board that there are issues with that property, and that is valuable information that can be considered in the decision.

Silverstein stated the question is what information the Board feels it needs, and if there is additional information the Board feels it needs, what that means process wise. He stated there has been no request prior to tonight about appraisal information or anything along those lines. Kluchman advised the Board that insufficient information is a part of the reasons for denial provided for in the Draft decisions.

Hollister asked for clarification on what mitigation items were included in the 2009/2010 decision that are not included in this decision. Kluchman referenced a letter which distinguished between voluntary mitigation and concessions. She stated the applicant has not objected to many of those conditions that were seen as concessions and are included in the draft decisions. She stated the foam cart and operating hours have all been accepted by the applicant. The applicant's statement about withdrawing voluntary mitigation had to do with paving of miles of road, sidewalks, patching material, athletic fields, and athletic courts.

Green asked if the truck scales are suitably noted in the decision. Kluchman stated the only thing she sees related to scales is offering the Police Department an SUV that is valued at \$75,000, and that was withdrawn. Silverstein stated he believes the applicant has scales on site that they use for measuring the amount of material they are selling. Green clarified these are not for enforcement offsite for vehicles. Kluchman noted that truck scales were not requested by the Westford Police Department.

*Motion made by Galvin to close the public hearing. Motion seconded by Hollister. The motion passed by a 4-0-1 vote (Lewin abstained).*

*Motion made by Galvin that the Planning Board approve a Site Plan Review for PB 1504 submitted under Section 9.4 of the Town of Westford Zoning Bylaws, in response to the application for the addition of an asphalt manufacturing plant at 540 Groton Road, also known as 20 Commerce Way, to other uses, and authorizes Planning Board staff, based upon directions received this evening, to reduce the decision to writing with benefit of input from Town Counsel, and to submit said decision with the office of the Town Clerk no later than the close of business on April 24, 2015. Motion seconded by Hollister. The motion passed by a 4-1-0 roll call vote (Green opposed).*

*Motion made by Galvin that the Planning Board approve Stormwater Management Permit PB 1504, submitted under Chapter 147 of the Town of Westford General Bylaws, in response to the application of the addition of an asphalt manufacturing plant at 540 Groton Road, also known as 20 Commerce Way, to other uses, and authorize that the Planning staff, based upon direction received this evening, to reduce the decision to writing with benefit of input from Town Counsel, and to submit said decision with the office of the Town Clerk no later than the close of business on April 24, 2015. Motion seconded by Hollister. The motion passed by a 5-0-0 vote.*

*Motion made by Galvin that the Planning Board approve a Special Permit for storage of hazardous materials within the Water Resource Protection Overlay District, PB 1504, submitted under Section 8.1 of the Town of Westford Zoning Bylaws, in response to the application for the addition of an asphalt manufacturing facility at 540 Groton Road, also known as 20 Commerce Way, to other uses, and authorize that Planning staff, based upon direction received this evening, to reduce the decision to writing with benefit of input from Town Counsel, and to submit said decision with the office of Town Clerk no later than the close of business on April 24, 2015. Motion seconded by Hollister. The motion passed by a 5-0-0 vote.*

*Motion made by Galvin that the Planning Board approve a requested waiver from the MCP Standard 9.3A.4.2, Noise, regarding ambient noise level, no person shall operate or cause to operate any source of sound in a manner that creates a sound which exceeds 70 dBA, or 10 dBA above the ambient, or whichever is lower when measured at the property boundary of the receiving land use, at the western lot line as represented on the site plan. Motion seconded by Hollister. The motion failed by a 1-4-0 vote (Hollister in favor).*

The following discussion occurred after the above motion, and prior to the above vote. Hollister stated she does not see the value of building a wall so close to an existing hill. She stated the equipment attenuation would bring the sound at this property line to approximately 60 to 65 dBA, which is 10 dBA above ambient.

Galvin stated he is against granting the waiver. He stated the barrier has a certain relationship to the site plan and he is willing to reconsider at some point if a variance is granted but he is going to maintain that it stays. Green stated the wall is identified as a requirement to meet the performance standards on the Special Permit. It does not speak to potential future uses of the abutting properties and the burden it might put on other properties if it is not there, and goes to the specific use proposed by the applicant that necessitates the need for it to meet the performance standards. He stated he is not in favor of the waiver. Lewin stated he is in agreement with Green.

Kluchman stated the applicant has filed a separate waiver to build an 8 foot wall.

*Motion made by Lewin that the Planning Board grant relief by not requiring the 1200 foot long, 35 foot high wall, but requiring a sound source attenuation to a lesser degree by constructing a 1200 foot long, 8 foot high wall along the same westerly border. Motion seconded by Hollister. The motion failed by a 1-4-0 vote (Hollister in favor).*

*Motion made by Galvin that the Westford Planning Board approve the Special Permit for Major Commercial Project PB 1504, submitted under Section 9.3.8 of the Town of Westford Zoning Bylaw, in response to the application for an addition of an asphalt manufacturing facility at 540 Groton Road, also known as 20 Commerce Way, to other uses, and authorize that the Planning staff, based on direction received this evening, to reduce the decision to writing with benefit of input from Town Counsel and to submit said decision with the office of the Town Clerk no later than close of business on April 24, 2015. Motion seconded by Hollister. The motion failed by a 1-4-0 vote (Hollister in favor).*

The following discussion occurred after the above motion, and prior to the above vote. Galvin stated this was a long process. What they have is a traditional industrial area butting up against a

very highly developed residential area. He stated the Board needs to look to the town for guidance with regard to what the policy is as they make their decision and referenced four sources. The first is the original town bylaw with regard to light manufacturing, which to him indicates that this project is not suitable for this particular site. The Special Permit criteria determining whether the project will cause substantial detriment to the neighborhood and the town based on the characteristics of the site and the characteristics of the proposal in relation to the site. He stated there are six criteria for Special Permits, and he has issue with two of them with regard to this proposal: the neighborhood character and social structures and potential fiscal impacts regarding town services, particularly tax base, property values, and employment.

Galvin stated there is also Major Commercial Project criteria which states community character is an essential element of the review. The project must be compatible with the neighborhood, the location size and design and building materials and operating characteristics of the proposed development shall be compatible with abutting properties, natural build environment in the area, and surrounding neighborhoods with consideration given to harmony in scale, massing, generation of traffic, and the capacity of surrounding streets in consistency with the goals and objectives of the Town of Westford's Master Plan. He stated he reviewed the Master Plan and the first goal of the Natural Resources and Open Space section is to provide clean, safe, healthy, diverse, and vibrant natural surroundings. In the Housing and Neighborhoods Section the first goal is to support and preserve distinctive, cohesive neighborhoods by ensuring that the new development, alterations to existing buildings, and redevelopment are compatible with surrounding homes in density, scale, and design.

Galvin stated as he looks at this project he has concerns. There is an issue with substantial traffic and the impacts are unknown. He stated between the hours of 7:00 a.m. and 9:00 a.m. there will be a substantial impact to traffic at the entrance to the site, which was stated by the applicant. He also believes there will be increased emissions, fire and hazard danger, odor, and confined space hazards. He stated these issues are all risks, and may not exceed industry standards of acceptable risk, but taken comparatively and given the nature of the situation they present a detrimental condition on this particular neighborhood. He stated he is convinced from testimony provided yesterday evening that this project will involve a potential impact on property values and there has been no evidence to suggest that it will not. He stated he opposes the project.

Hollister stated this is an industrial area, it is abutting the quarry, the property across from it is commercial. She stated it is unfortunate for the residents of Chelmsford that they are surrounded by commercial or nonresidential properties. In terms of the scale it is set way back, it is not going to be viewable from the road, and it is not out of scale with what is there. She stated that given the area has been zoned industrial and looking at other potential uses for what could go on the property the traffic would not be any worse than any other use. She stated the Board in the past has approved a different use for this lot which is no longer going to be built, which was self-storage, and the Board had no problem with the traffic that was going to be generated from that. She does not think this traffic is substantially worse than what could be there with the self-storage.

Hollister stated there is potential for backups in the morning, but she has observed that while traffic was moving slowly, it was not that bad. She stated the traffic study indicated there would be no degradation on Route 40, just internal to the site, that they may have more internal queuing. She stated she disagrees with Galvin's interpretation. She agrees that traffic is the main concern, along with noise.

Wizst stated if someone asked him if bituminous concrete processing was light manufacturing he would say no. He stated as for the criteria given by Land Court the applicant has satisfied the criteria in front of the Board to meet that definition. He stated his issue, however, is with the use of the property and the intent of the Major Commercial Project is to look at the property overall and its uses and that is where he has an issue with the application. Green verified that Wizst meant in terms of his view that MCP is intended for the overall site.

Lewin stated his biggest challenge with this is that he just does not know the impact. The Board has been provided plenty of information, but he does not believe this is light manufacturing, however, the judge made his decision. He stated he has made no secret on public record of his belief that the judge has forced the Board into an unreasonable situation in an unreasonably short timeframe. He stated in this particular case he thinks the applicant has not been able to provide the Board with the information the Board needs to make a decision and he will be forced to deny.

Green stated he agrees the MCP includes the entire site, and this was stated very early in the process. He stated the 2009 data represented the same, the DEP permit represented the same, and the Board is faced with conflicting information and the applicant not providing data in actual conflict to data previously approved and provided, or in the DEP permit. He questions the performance standards related to just the asphalt plant with the attenuation in place and questions their achievement of the performance standards, including the overall site criteria. He stated given the testimony yesterday evening and data received last night as to truck traffic, mobile source emissions, and variability of types of trucks within the 250 trip variable, given the project locus, neighboring residents would be subject to additional point mobile source emissions. There are EPA requirements that exist past the mobile emissions that were used for the modeling in 2009 and that data was not represented here. There have been further EPA requirements for mobile source emissions, postdating information received in 2009.

Kluchman stated staff will be refining the Board's decisions and submitting them to the Town Clerk prior to April 24, and will provide them to Town Counsel for submission to the Land Court.

*Motion made by Galvin to adjourn. All in favor.*

### **List of Documents and Other Items Used at the Meeting**

1. Draft Motions for Site Plan Review, Special Permit Water Resource Protection District, Special Permit Major Commercial Permit, and Stormwater Management Permit
2. January 21, 2010 Letter from School Superintendent Everett V. Olsen Jr. with Air Quality report
3. April 14, 2015 letter from Thomas Reilly
4. Email correspondence from public, received April 14, 2015